

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

MFA.No. 135 of 2008 ()

AGAINST THE ORDER IN WCC 94/2004 of W.C.COMMISSIONER, THRISSUR
DATED 29-11-2007

APPELLANT:2ND OPPOSITE PARTY

NEW INDIA ASSURANCE CO.LTD.,
REP. BY ITS DY.MANAGER, REGIONAL OFFICE, M.G.ROAD
KOCHI-11.

BY ADVS.SRI.KKM.SHERIF
SRI.A.A.ZIYAD RAHMAN

RESPONDENT(S):APPLICANTS 1 TO 3 & 1ST OPPOSITE PARTY

1. BUSHARA, W/O.ILLIAS,
ARACKKAL PANDARATH HOUSE, CHOOLPURAM.

2. BEEVATHU, W/O.KUNJUMON,
ARACKKAL PANDARATH HOUSE, P.O.PUTHENPALLI, GURUVAYOOR.

3. IJAS (MINOR), S/O.LATE ILLIAS,
ARACKKAL PANDARATH HOUSE, CHOOLPURAM.

4. C.K.PRAMAOD, S/O.KUMARAN,
CHITTATUKKARA HOUSE, PO.CHAKKUMKANDAM, THRISSUR.

R,R1, 2 BY ADV. SRI.SHEJI P.ABRAHAM

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON
11-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

T.R.RAMACHANDRAN NAIR & P.V ASHA, JJ.

M.F.A(W.C.C) No.135 of 2008

Dated this the 11th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the Insurance Company aggrieved by the finding of the Workmen's Compensation Commissioner that the appellant has to satisfy the compensation in respect of a workman who died in a fatal accident, under the Workmen's Compensation Act, 1923. The claimants approached the Commissioner consequent on the death of the workman, namely Shri Illias, who was employed under the 4th respondent, on 23.01.2004. The accident occurred while he was returning home in a vehicle bearing Reg.No.KL-8/Y 343 owned by his employer. Finally the Commissioner arrived at a compensation of Rs.3,08,925/-.

2. The substantial question of law raised is, whether in the light of Section 147 of the Workmen's Compensation Act, the deceased will be covered under the policy as only a

driver/employer is covered by the policy.

3. The learned counsel for the claimants relied upon a decision of the Full Bench of this Court in **United India Insurance Company Ltd. v. Surendran** [2015(1) KLT 45(F.B)]. Therein the Full Bench took the view that the requirement under Section 147 is only that the person should be engaged in driving the vehicle under the employer namely the vehicle owner. We extract the relevant paragraph 16 of the judgment herein below:

“Thus, the above judgments rendered by this Court show that, consistently it was being held that, if an employee, in discharge of his duties, is engaged in driving a vehicle as permitted by his employer, irrespective of whether he is employed as driver or not, the employee would be entitled to the coverage of the proviso to S.147, provided the accident has occurred out of an in the course of his employment.”

Herein the deceased was permitted by his employer. Therefore since the substantial question of law raised is covered by the decision of the Full Bench as noted above, we find no reason to interfere with the impugned order. The employee-employer relationship was found, which we confirm in the light of the evidence adduced and since it is a pure question of fact. Accordingly the appeal is dismissed. The amount deposited will

be released to the claimants by the Workmen's Compensation Commissioner on production of a certified copy of this judgment.

Sd/-

T.R.RAMACHANDRAN NAIR
Judge

Sd/-

P.VASHA
Judge

rtr/

/true copy/

P.S to Judge